



Genova Burns LLC
494 Broad Street, Newark, NJ 07102
Tel: 973.533.0777 **Fax:** 973.814.4045
Web: www.genovaburns.com
Affiliated with Genova Burns LLP

Rajiv D. Parikh, Esq.
Partner
Member of NJ and NY Bars
rparikh@genovaburns.com
Direct: 973-535-4446

March 13, 2024

VIA ECF

Hon. Tonianne J. Bongiovanni, U.S.M.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building
402 East State Street
Trenton, New Jersey 08608

**Re: Kim, et al. v. Hanlon, et al.,
Civil Action No.: 24-1098(ZNQ)(TJB)**

Dear Judge Bongiovanni:

Kindly accept this letter in lieu of a more formal application regarding a discovery dispute in the above referenced emergent action. Specifically, Plaintiffs have refused to produce a handful of highly relevant documents and information that relate to the timing of Plaintiffs' preliminary injunction filing. Indeed, from documents produced, it appears that Plaintiffs expressly delayed the filing of their application to prejudice this Court, Defendants and the public.

As the Court is aware, an exigency created by a movant's own delay is itself a basis for denying the requested relief. *See, e.g. Benisek v. Lamone*, 585 U.S. 155, 159 (2018). Here, several of the alleged expert reports presented with Plaintiffs' filings were finalized in December 2023 – over 2 months prior to Plaintiffs' initiation of this action. The requests are quite simple:

1. Defendants have requested copies of engagement letters/retainer agreements between Plaintiffs and their counsel. Plaintiffs have claimed privilege, and Defendants indicated that while engagement letters are not privileged as a matter of law, even a redacted agreement would be sufficient for purposes of this expedited hearing. Plaintiffs' final position is that Defendants can simply ask questions of the witnesses regarding this issue at the March 18, 2024 evidentiary hearing.
2. Defendants requested copies of communications between proposed experts and counsel, proposed experts and Plaintiffs and/or a privilege log. Plaintiffs objected on breadth and proportionality, among other things. Defendants advised during a meet and confer that we do not need a privilege log of all communications, but simply a copy



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of any pre-engagement communications between proposed experts and Plaintiffs, and a privilege log identifying the first 5-10 communications with each proposed expert related to this matter. Plaintiffs have advised that they will not produce same.

3. Yesterday, several proposed amici filed motions for leave to appear in this action. Accordingly, Defendants requested that Plaintiffs identify and/or provide communications between the proposed amici or their counsel, and Plaintiffs and/or their counsel exchanged on or before February 26, 2024 – the date this action was initiated.

The parties had a meet and confer conference on March 10, 2024 regarding the first and second requests, among others. Plaintiffs advised late on March 11 of an impasse. The undersigned spoke with Plaintiffs' counsel on March 12, 2024 regarding the third request and agreed to present these issues to the Court with the understanding that Plaintiffs were unlikely to provide same.

Defendants have diligently sought a limited amount of information necessary to prepare for the March 18, 2024 hearing. Despite responding promptly to Plaintiffs and offering to meet and confer on discovery issues, Plaintiffs have dragged out the discussions and been selectively responsive, relying on the megabyte size of materials produced instead of the substance. These purposeful delays – like their apparent delays in initiating this action – are prejudicial and have had significant consequences on Defendants' ability to adequately prepare.

As such, we respectfully request a conference with the Court to discuss the discovery issues or an order compelling Plaintiffs to provide the limited information requested above.

Respectfully,

GENOVA BURNS LLC

s/ Rajiv D. Parikh

RAJIV D. PARIKH

c: Honorable Zahid N. Quraishi, U.S.D.J (via ECF)
Counsel of Record (via ECF)